DAVID D. PLATER

IBLA 80-653 Decided June 26, 1981

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting application for purchase of mineral rights. ES 22772.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interests

   An application for conveyance of mineral interest to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), may be approved where BLM determines (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Absent a finding of the existence of one of these conditions, an application is properly rejected.

APPEARANCES: David D. Plater, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

David D. Plater appeals the April 4, 1980, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting appellant's application for purchase of the oil and gas rights that were reserved to the United States in patent No. 1170517.

Appellant is the successor in interest to the surface ownership of sec. 153, T. 15 S., R. 16 E., Louisiana meridian, Louisiana. Appellant's interest derives from the perfection of a color-of-title application of Richard C. Plater, Jr., that resulted in the issuance of

patent No. 1170517 pursuant to the Color of Title Act, 43 U.S.C. §§ 1068 through 1068b (1976). On October 5, 1979, appellant made application for conveyance of the federally owned mineral interests in the above-mentioned land. The application was made pursuant to 43 CFR Part 2720 promulgated under the authority of sections 209 and 310 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1719, 1740 (1976).

Upon receipt of appellant's application, BLM requested that Geological Survey (Survey) prepare a report on the oil and gas mineral value of the land. If Survey determined that the lands contain valuable minerals it was requested to include an estimated cost of (a) an exploratory program to establish fair market value of the minerals; (b) an evaluation of an exploratory program performed by appellant; and (c) a search of records and data to establish fair market value. Survey was also requested to provide the fair market value of the minerals.

Survey submitted its report which stated that the tract is valuable for oil and gas, that the estimated cost of an exploratory drilling is $5,812,500, and that the fair market value is $1,300 per acre. Survey's report noted that a gas field is located less than a mile from the tract and a gas-condensate well was completed only 4,000 feet from the tract in 1979.

The BLM decision rejecting the application states that the application did not meet the requirements of section 209(b)(1) of FLPMA for the following reasons:

> The U.S. Geological Survey reports that the subject tract is valuable for oil and gas with an estimated fair market value of $1,300 per acre. Therefore, the application does not meet the first requirement that there be no known mineral values in the land.
>
> The application fails to demonstrate that the reservation of the mineral rights in the United States is interfering with or precluding appropriate non-mineral development of the land and that such development is a more beneficial use of the land than mineral development. The present and proposed uses of the land are for agriculture, which is not incompatible with oil and gas development. The applicant suggests that community growth at some future time may call for residential development of the land, but such speculation does not meet the statutory requirement of present interference with use of the surface, which may include interference with obtaining financing or title insurance as well as actual interference.

Appellant makes the following arguments on appeal: (1) The subject land does not contain valuable minerals; (2) the estimated fair market value is unsupportable; (3) the mineral rights interfere with

the appropriate non-mineral development of the land; (4) the Government should not possess title to the mineral rights in the land.

[1] Section 209(b)(1) of FLPMA (43 U.S.C. § 1719(b)(1) (1976)) provides:

> The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

Appellant asserts that Survey's report is incorrect in its conclusion that the land's valuable for oil and gas, with an estimated fair market value of $1,300 per acre. Appellant alleges that the occurrence of oil and gas in the area where the property is located is strictly "hit or miss" and that several wells were drilled in the immediate area without success which were not considered by Survey. Specifically, appellant states at page 2 of his statement of reasons:

> Significantly, the Geological Survey Report makes no mention 1) that a well was drilled on 10,010 feet in 1955 only a few hundred feet from Section 153 and was abandoned as a dry hole; 2) that in 1962, Humble's #1 R. C. Plater, about 2,500 feet to the southeast of Section 153, was a 16,100 foot dry hole; or 3) that in 1972, a deep test below 15,000 feet in Section 42 was a dry hole, just 2,000 feet to the northwest, the Sick and Mott #1 R. C. Plater, Jr. 1/

1/ Per memorandum dated May 29, 1981, Survey advised that:

"The Survey did, in fact, consider these abandoned wells. The evaluation was influenced by the fact that the parcel in question is located within a mile west of producing gas wells in the Rousseau field. A presumption could be made that the parcel in question might overlay productive reservoirs. The dry holes referred to by the appellant do not negate this presumption since they are not geographically located between the parcel and the producing area. Although it is true that one well is located in close proximity to the parcel, it is located to the southwest and was drilled to a depth of only 11,010 feet. Production has been established at 15,238-15,255 feet from a recently completed (August 8, 1979) well located less than a mile to the east of the parcel."

Survey is the Secretary of the Interior's technical expert in matters concerning geologic evaluation of tracts of land and the Secretary is entitled to rely on Survey's reasoned analysis. Dean A. Clark, 53 IBLA 362 (1981); Southern Union Exploration Co., 51 IBLA 149 (1980). When BLM relies upon Survey's conclusion that land has mineral value it must insure that a reasonable explanation is provided in the record to support the Survey's conclusion. See Bernard Gencorelli, 46 IBLA 53 (1980). Survey's conclusion that the land has mineral value is based on the success of a nearby producing well and the close proximity of the gas field. The estimated fair market value of the mineral interest was arrived at by considering leasing data in the area. Neither appellant's characterization of the oil and gas occurrence in the area as "hit or miss," nor his allegation regarding the three abandoned wells show that the BLM decision is erroneous. Those wells were abandoned from 9 to 26 years ago. The Survey report is based on existing producing oil wells and gas fields.

The burden is on appellant to present a convincing and persuasive argument to rebut BLM's determination that the subject land has mineral values. See Dean A. Clark, supra. Absent a clear and definite showing of error, we will not disturb the BLM determination. Donnie R. Clouse, 51 IBLA 221 (1980); The Kemmerer Coal Co., 26 IBLA 127 (1976).

Appellant also asserts that the Government's retention of the mineral interest in the land interferes with the appropriate nonmineral development of the land. Appellant states that the present use of the land for agricultural purposes would be obliterated by utilization of the tract of land for mineral development and that the land has potential for urban development which could not occur on property where the Government retains the right to drill for oil and gas. Appellant maintains that both agriculture use and urban development of the land would be more beneficial than mineral development in light of the highly speculative nature of the existence of oil and gas.

The applicable statute and regulations contemplate more immediate preclusions of appropriate nonmineral development than mere speculation that at some future time the property would be used for urban development. Similarly, even though appellant suggests that oil and gas exploration would interfere with present agricultural use of the land, he has not shown how agricultural or urban development use is a more beneficial use of the land.

Appellant's final point is that title to the mineral interest should not be in the United States. He contends that a mistake occurred during the resurvey of the township in the 1850's that resulted in the Government obtaining the mineral interests in the land. Appellant's title to surface interests in the land derives from a color-of-title application that reserves the mineral estate to the Government. A document signed by the color-of-title applicant recognizes the Government's interest in the property and states "It is my understanding that sec. 153 was granted in 1847 as swampland to the Morgan's La. and Texas R.R.

and subsequently released by them to the State of Louisiana. It was inadvertently omitted from the list of swamplands patented to occupants in 1856 and reverted to the Federal Government." The record is devoid of any evidence that title to the land was other than in the Federal Government at the time the patent issued in 1957. Accordingly, BLM properly rejected appellant's application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge